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Department of Toxic Substances Control

**STATE OF CALIFORNIA
ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF TOXIC SUBSTANCES CONTROL**

In the Matter of:

AERC.com, INC.,
and
MERCURY TECHNOLOGIES
INTERNATIONAL, L.P.
30677 Huntwood Avenue
Hayward, California 94544

EPA ID No.: CAD982411993,

Respondent.

Docket HWCA 99/00-2008

CONSENT ORDER

Health and Safety Code
Section 25187

The State Department of Toxic Substances Control ("Department") and
AERC.com, Inc., and Mercury Technologies International, L.P. (collectively, "Respondent")
enter into this Consent Order and agree as follows:

1. Mercury Technologies International ("MTI") is a limited partnership, with its
principal place of business in California at 30677 Huntwood Avenue, Hayward, California.

AERC.com, INC. ("AERC") is a corporation, organized and existing under the laws of the State

of Pennsylvania, with its principal place of business in California at 30677 Huntwood Avenue, Hayward, California ("the Site"). On or about January 1, 2001, the MTI facility in Hayward began operating as AERC. Respondent is the owner and/or operator of a hazardous waste storage and treatment facility, as defined at section 66260.10 of title 22 of the California Code of Regulations.

2. Respondent is authorized to manage hazardous waste by Standardized Waste Facility Permit, Series A, issued to MTI by the Department on November 25, 1997. This permit became effective December 29, 1997 and was revised on February 9, 1999.

3. The Department inspected the Site on November 30, 1999 and November 16, 2000.

4. The Department alleges the following violations:

4.1. On or about February 2000, and continuing to the present, Respondent violated California Health and Safety Code section 25202 and title 22, California Code of Regulations sections 66270.30, 66270.42, and 66270.42 by installing and operating a new fluorescent lamp demanufacturing system without first obtaining the Department's approval for the replacement of the permitted unit;

4.2. On or about November 30, 1999, and continuing to on or about February 15, 2001, Respondent violated California Health and Safety Code section 25202 and title 22, California Code of Regulations sections 66270.30 and 66263.18 by receiving and storing spent PCB lighting ballasts, a hazardous waste Respondent was not authorized to receive and store under the terms of its permit.

4.3. On or about November 30, 1999 and continuing to the year 2000, Respondent violated title 22, California Code of Regulations sections 66264.142 and 66264.143 by reducing its closure cost estimate from the approved amount of \$44,520 to \$29,796 without the required prior approval, and by making two annual payments into the required financial assurance fund that were insufficient.

5. A dispute exists regarding the alleged violations.

1 6. The parties wish to avoid the expense of litigation and to ensure prompt
2 compliance.

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4 7. Jurisdiction exists pursuant to Health and Safety Code section 25187.

5 8. Respondent waives any right to a hearing in this matter.

6 9. Respondent does not admit the violations alleged above, except Respondent
7 does admit to the facts of the alleged violations above for the purposes of any subsequent action
8 brought pursuant to the Hazardous Waste Control Law ("HWCL"), Health and Safety Code
9 sections 25100 *et seq.* within five years of the violations.

10 10. This Consent Order shall constitute full settlement of the violations alleged
11 above, but does not limit the Department from taking appropriate enforcement action concerning
12 other violations.

13 TERMS AND SCHEDULE OF COMPLIANCE

14 11. Respondent shall comply with the existing MTI Series A Standardized Permit
15 and, in addition, shall comply with the following:

16 11.1. Until the Department takes final action regarding Respondent's
17 Class 2 permit modification application (submitted to the Department on May 28, 2002) under
18 the provisions of section 66270.42 of title 22 of the California Code of Regulations, the
19 following conditions shall apply to Respondent's operation of the Model LSS1 Fluorescent Lamp
20 Recycling Equipment (hereafter referred to as "LSS1"):

21 11.1.1. The feed rate for the LSS1 shall be limited to no greater
22 than 1,250 lamps per hour; this information shall be logged in the facility operating record.

23 11.1.2. Any crushed fluorescent lamps inadvertently received by
24 Respondent (that do not constitute lamps incidentally broken during handling and transit), may
25 be processed at quantities not to exceed a total of 1200 pounds per month. Respondent shall not
26 solicit crushed fluorescent lamps from customers or potential customers and shall inform
27 customers and potential customers in writing that Respondent's facility does not accept

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1 containers of crushed fluorescent lamps. During the time that any crushed fluorescent lamps are
2 fed into the LSS1, the operator(s) of the LSS1 shall wear a full-face respirator. Information
3 documenting the processing of crushed fluorescent lamps and lamps incidentally broken during
4 handling and transit, including generator name or other source, amounts and dates processed,
5 shall be logged in the facility operating record. Within 60 days of the effective date of this
6 Consent Order, Respondent shall submit to the Department an amendment to the pending permit
7 modification application to authorize the receipt and processing of crushed fluorescent lamps.
8 The amendment to the pending application shall include engineered and operating controls to (1)
9 ensure that the crushed lamps are transferred to the LSS1 in a manner to minimize or prevent
10 fugitive releases and (2) demonstrate that the LSS1 has adequate capacity to process a drum of
11 crushed lamps without overfilling or jamming.

12 11.1.3. The Respondent shall not modify or alter the LSS1 unit
13 (including but not limited to modifications and alterations of key mechanical processes and
14 emergency shutdown features) or change the location of the unit, without the express, written
15 approval of the Department.

16 11.1.4. The equipment, operator areas and collection/discharge
17 points of the LSS1 shall be monitored for mercury concentrations every two (2) hours of
18 operation. All measurements taken shall be logged into the facility operating record specifying
19 the date, time, and location of measurements. Equipment discharge is limited to: powder,
20 crushed glass, oversize glass, end caps and metal debris.

21 11.1.5. Respondent shall, at a minimum, take one (1) grab sample
22 per week from the crushed glass and metal end cap waste, and test one (1) monthly composite
23 sample at a California State Certified Analytical Laboratory to verify that the LSS1 is
24 performing efficiently and that the crushed glass and end caps discharged do not exceed
25 hazardous waste criteria for mercury. Respondent shall retain these test results as part of the
26 facility operating record. If test results show that any sample tested exceeds hazardous waste
27 criteria for mercury, Respondent shall cease operation of the LSS1 and shall implement

1 engineering and/or administrative controls until the problem causing the sample to exceed
2 hazardous waste criteria is corrected. Respondent shall notify the Department within 24 hours
3 whenever samples tested exceed hazardous criteria for mercury and shall provide a copy of the
4 test results to the Department within 7 days. Operation of the LSS1 can resume upon submittal
5 of test results to the Department that demonstrate to the Department's satisfaction that the
6 crushed glass and the end caps no longer exceed hazardous waste criteria for mercury.

7 11.2. Within 30 days of the effective date of this Consent Order,
8 Respondent shall fully fund the closure trust fund in accordance with the July 1996 approved
9 closure cost estimate of \$44,520.00, as adjusted for inflation using the following inflation factors
10 for each year since 1996: 1997- 1.020; 1998- 1.010; 1999- 1.014; 2000- 1.021; 2001- 1.022.

11 PAYMENTS

12 12. Respondent shall pay the Department a total of \$84,000.00, of which
13 \$76,500.00 is a penalty and \$7,500.00 is reimbursement of the Department's costs. This
14 amount shall be due and owing on the effective date of this Consent Order, but shall be paid as
15 follows:

16 12.1. Upon compliance with all of the terms and conditions set forth in
17 paragraph 15^{1/} of this Consent Order, the Respondent shall be entitled to a credit of up to
18 \$20,500 of the penalty for the completion of a Supplemental Environmental Project ("SEP").

19 12.2. Upon compliance with all of the terms and conditions set forth in
20 paragraph 16 of this Consent Order, the Respondent shall be entitled to a credit of \$5,000 for
21 satisfactory completion of Compliance School.

22 12.3. Respondents shall pay the remaining sum of \$58,500.00 in 24
23 installments of \$2,484.38 with the first payment paid on the effective date and the remaining
24 payments paid on the first of the month beginning December 1, 2002 and continuing until

25 1. Reference to a numbered paragraph in this Consent Order includes reference to all
26 subparagraphs using that number; for example, reference to paragraph 15 includes all
27 subparagraphs denoted 15.1, 15.2, 15.3, etc.

October 1, 2004, unless the conditions set forth in subparagraph 12.4 apply. This payment schedule reflects simple interest on the amount due in the amount of the current Surplus Money Investment Fund yield rate (3.993%), which shall accrue from the effective date. No interest shall be due on the civil penalties for which credit is granted pursuant to paragraphs 15 and 16 of this Consent Order.

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12.4. In the event the Department approves Respondent's Class 2 permit modification under the provisions of section 66270.43 of title 22 of the California Code of Regulations on or before December 1, 2002, the remaining sum of \$58,500.00 shall be paid as follows: (1) 17 installments of \$2,484.38, with the first payment paid on the effective date and additional payments of \$2,484.38 paid on the first of the month beginning December 1, 2002 and continuing on the first of each month until March 1, 2004; and (2) the balance of the \$58,500.00 paid in a lump sum payment on April 1, 2004.

13. All moneys due and payable for penalties or costs shall be made by Respondent's check made payable to Department of Toxic Substances Control, shall bear the docket number "HWCA 99/00-2008," and shall be delivered to:

Department of Toxic Substances Control
Accounting Office
1001 I Street
P.O. Box 806
Sacramento, California 95812-0806

A photocopy of the check shall be sent to:

Charlene Williams, Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control
700 Heinz Avenue, Ste. 200
Berkeley, California 94710

Nancy Long, Esq.
Office of Legal Counsel
Department of Toxic Substances Control
1001 I Street
P.O. Box 806
Sacramento, CA 95812-0806.

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2 14. If Respondent fails to make any payment as provided in this Consent Order,
3 Respondent agrees to pay interest at the rate established pursuant to Health and Safety Code
4 section 25360.1 and to pay all costs incurred by the Department in pursuing collection, including
5 attorney's fees.

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9 SUPPLEMENTAL ENVIRONMENTAL PROJECT

10 15. Upon Respondent's compliance with this paragraph (paragraph 15 and all
11 subparagraphs), DTSC shall give credit for up to \$20,500 of the penalties for qualifying services
12 that Respondents provide free of charge to the household hazardous waste collection facilities
13 regulated by the Department under the permit by rule provisions of article 10.8 of chapter 6.5 of
14 division 20 (commencing with section 25218) of the Health and Safety Code and operating in
15 Alameda County, Contra Costa County, Santa Clara County, San Mateo County, Marin County,
16 the City and County of San Francisco.

17 15.1. The services provided by Respondent that qualify for this credit are:
18 (1) transportation; (2) packaging as necessary for proper transportation; and (3) treatment,
19 storage and disposal of spent fluorescent straight lamps and other fluorescent lamps, including
20 compacts, U-tubes, HID lamps and Plastic Coated Lamps. Spent fluorescent lamps shall be
21 either delivered to Respondent's facility in Hayward by the participating cities and counties or
22 transported by Respondents from collection points designated by the participating cities and
23 counties to Respondent's facility in Hayward. Respondent shall receive credit only for those
24 services that it is legally authorized to provide. Respondent must provide the services in strict
25 compliance with the HWCL and all other applicable laws and ordinances. If at any time, in the
26 course of providing these services, Respondent violates any provision of the HWCL related to
27 the provision of these services, the Department may terminate Respondent's eligibility for the

1 credit and any amount of the credit not yet received by Respondent will become due and payable
2 as a penalty within 30 days of that termination.

3 15.2. To receive the SEP credit, the Respondent must submit, in the
4 manner required by paragraph 17, an application that includes clear and complete documentation
5 of the qualifying services provided. The application must include a complete description of the
6 number of each type of spent lamp collected and processed and the fair market value of the
7 services provided by Respondent. Fair market value for processing services shall not exceed the
8 following: \$0.04 per foot for straight lamps; \$0.50 each for compact and U-tube lamps; \$0.95
9 each for HID and Plastic Coated Lamps. Fair market value for transportation services shall not
10 exceed: \$75.00 per trip, plus \$25.00 for each stop on a trip; these amounts include labor and
11 insurance costs. Fair market value for packaging expenses shall not exceed \$35.00 per hour for
12 labor, \$3.00 for each 4 foot container, and \$7.00 for each 8 foot container. A responsible official
13 of the participating household hazardous waste collection facility must sign the application and
14 attest that the facility received the services described on the application free of charge, and that
15 the number of spent lamps collected or delivered was the amount stated on the application.
16 Respondent must submit an application semi-annually, documenting the services provided in the
17 preceding six months.

18 15.3. Within 30 days of receiving Respondent's application, the
19 Department will provide Respondent with written notification of the amount of credit that the
20 Department will grant for the services provided in the application. The Department will grant
21 credit only for services that Respondent provides prior to November 1, 2004. Any amount of the
22 \$20,500 credit not applied for by Respondent and approved by the Department on December 1,
23 2004 will become due and payable as a penalty within 30 days of December 1, 2004.

24 15.4. Nothing in this paragraph regarding SEP credits shall be construed
25 to extend the due date of any payment owed by Respondent under paragraph 12.

26 COMPLIANCE SCHOOL

27 16. Upon Respondent's compliance with this paragraph (paragraph 16 and all
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1 subparagraphs), the Department shall give credit for \$5,000 of the penalties for the Site
2 manager's satisfactory completion of the Hazardous Waste Training Course from the California
3 Compliance School. Satisfactory completion shall mean the same as defined in the Department's
4 Management Memo # EO-95-005-MM with respect to all five training modules (covering
5 hazardous waste identification, onsite management requirements, preparedness, prevention,
6 training, transportation, and tiered permitting) provided by the California Compliance School.

7 16.1. To receive the credit, the Respondent must submit an application
8 that includes a Certificate of Satisfactory Completion issued by the California Compliance
9 School within 185 days of the effective date of this Consent Order. Within 30 days of receiving
10 Respondent's application, the Department will notify Respondents whether the Department will
11 grant credit for Respondent's completion of Compliance School training.

12 16.2. If Respondent fails to comply with any of the terms of this
13 paragraph, the sum of \$5,000 shall become due and payable as a penalty within 30 days after the
14 expiration of the 185 day period. The 185 day period may be extended by the Department's
15 Northern California Branch Chief upon a written request demonstrating good cause.

16 OTHER PROVISIONS

17 17. All submissions, applications, and notices required by this Consent Order
18 shall be sent to the Department as follows:

19 Charlene Williams, Chief
20 Northern California Branch
21 Statewide Compliance Division
22 Department of Toxic Substances Control
23 700 Heinz Avenue, Ste. 200
24 Berkeley, California 94710

25 Nancy Long, Esq.
26 Office of Legal Counsel
27 Department of Toxic Substances Control
1001 I Street
P.O. Box 806

Sacramento, CA 95812-0806.

18. Nothing in this Consent Order shall constitute or be construed as a

1 satisfaction or release from liability for any conditions or claims arising as a result of past,
2 current, or future operations of Respondent, except as provided in this Consent Order.
3 Notwithstanding compliance with the term of this Consent Order, Respondent may be required
4 to take further actions as are necessary to protect public health or welfare or the environment.

5 19. By agreeing to this Consent Order, the Department does not waive the right
6 to take further enforcement actions, except to the extent provided in this Consent Order.

7 20. Failure to comply with the terms of this Consent Order may subject
8 Respondent to civil penalties as provided by Health and Safety Code section 25188 and any
9 other applicable provision of law.

10 21. This Consent Order shall apply to and be binding upon Respondent and its
11 officers, directors, agents, receivers, trustees, employees, contractors, consultants, successors,
12 and assignees, including but not limited to individuals, partners, and subsidiary and parent
13 corporations, and upon the Department and any successor agency that may have responsibility
14 for and jurisdiction over the subject matter of this Consent Order.

15 22. The Department shall not be liable for any injury or damage to persons or
16 property resulting from acts or omissions by Respondent, or Respondent's employees, agents or
17 representatives, in carrying out obligations pursuant to the Consent Order, nor shall the
18 Department be held as a party to or guarantor of any contract entered into by Respondent, or
19 Respondent's employees, agents or representatives, in carrying out obligations required pursuant
20 to this Consent Order.

21 23. The effective date of this Consent Order is the date it is signed by the
22 Department.

23 24. Each signatory to this Consent Order certifies that he or she is authorized by
24 the party he or she represents to enter into this Consent Order, to execute it on behalf of the party
25 represented, and to legally bind that party.

26 25. This agreement constitutes the entire agreement between the parties and may
27 not be amended, supplemented, or modified, except as provided in this agreement.

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4 Dated:

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8 Dated: November 19, 2002

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Original signed by

Robert Landmesser
ROBERT LANDMESSER
Owner and Operator
AERC, Inc.
Mercury Technologies International, L.P.

Original signed by

[Charlene Williams]
CHARLENE WILLIAMS, Chief
Northern California Branch
Statewide Compliance Division
Department of Toxic Substances Control